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10/773,724	02/06/2004	Shrinivas Ashwin	MS306987.01 / MSFTP619US	8320

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AMIN, TUROCY & CALVIN, LLP		FLEURANTIN, JEAN B
24TH FLOOR, NATIONAL CITY CENTER		
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SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	10/773,724	ASHWIN ET AL.
	Examiner	Art Unit	
	JEAN B. FLEURANTIN	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 October 2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-13,23 and 26-30</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) <u>14-22 and 24-25</u> is/are allowed.

6)☒ Claim(s) <u>1-13,23 and 26-30</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   This is in response to Applicant(s) arguments submitted on 10/30/06.

The following is the current status of claims:

Claims 14-22 and 24-25 have been withdrawn.

Claims 26-30 have been added. The Examiner discusses the newly added limitations of claims

26-30 in the following rejection.

Claims 1-13, 23 and 26-30 remain pending for examination.

Response to Applicant' Remarks

Applicant's arguments filed 10/30/06 have been fully considered but they are not persuasive for

the following reasons, see section I (rejection maintained and repeated below) and section II (response to

argument).

Claim Rejections - 35 USC § 101

I.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

Products may be either machines, manufactures, or compositions of matter.

A *machine* is "a concrete thing, consisting of parts or of certain devices and combinations of devices." *Burr. v. Duryee*, 68 U.S. (1 Wall.) 531, 570 (1863).

As per claim 11,

The independent claim 11, in view of the above cited MPEP section is not statutory, because "a computing system comprising a server in communication with a client via a tabular data stream (TDS) protocol in a network environment; and the TDS protocol comprising a query notification header with a data field that requests updates related to a query at a time the communication is initially established" does not produce any useful and tangible result.

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material per se.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive

material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir.

1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-

readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See

Diehr, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in Benson were

unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in

connection with the programming of a general purpose computer.").

And also all depend claims are rejected on that basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for

the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-13 are rejected under 35 U.S.C.102(b) as being anticipated by U.S., Patent 5,974,416

issued to Anand et al., ("Anand").

As per claim 11, Anand discloses "a ~~computing~~ computer-implemented system that facilitates

communication in client/server networks" (i.e., client and server are connected through a network; see col.

5, lines 12-2 and Fig. 1) comprising

"a server in communication with a client via a tabular data stream (TDS) protocol in a network

environment" (i.e., a tabular data stream, in which a client and server connecting through a network; see

col. 2, lines 3-10 and col. 4, lines 25-32 and Fig. 1); and

"the TDS protocol comprising a query notification header with a data field" (In light the

specification at paragraph [0013], the purposed of querying notification header is for providing future

updates. The method for tracking the updates to the format of adtg messages is disclosed by Anand col.

8, lines 12-22) "that requests updates related to a query at a time the communication is initially established" (i.e., requests data from a database, which the script or application issues a query sending across the internet (network) to the server; see col. 5, lines 15-20).

As per claim 12, Anand discloses "the query notification establishes channels and setup for the updates sent by the server to the client device" (In light the specification at paragraph [0013], the purposed of querying notification header is for providing future updates. The method for tracking the updates to the format of adtg messages is disclosed by Anand col. 8, lines 12-22).

As per claim 13, in addition to claim 11, Anand discloses "the query notification header enables at least one of an infrastructure component that can facilitate development of caching layers on top of SQL server applications or such that the creation of middle tier type caches that caching layer remain transparent to the client device" (i.e., as the application layer, invoking to perform a database query; see col. 2, lines 44-55).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 4-9, 23 and 26-28 are rejected under 35 U.S.C.103(a) as being unpatentable over U.S., Patent 5,974,416 issued to Anand et al., ("Anand") in view of U.S., Patent 5,412,805 issued to Jordan, II et al., ("Jordan").

As per claim 1, Anand discloses "a ~~computing~~ computer-implemented system to facilitates

communication between client device and a server device networks" (i.e., client and server are connected

through a network; see col. 5, lines 12-2 and Fig. 1) comprising:

"a multiple active result set (MARS) header" (In light the specification at paragraph [0010], the

purposed of supporting a Multiple Active Result Sets (MARS) feature, including a data field header is for

identifying pending requests. The method for processing requests data from a database, which script or

application issues a query sending across the internet to the server; see col. 5, lines 15-20), and

"a data field that is part of the MARS header" (In light the specification at paragraph [0010], the

purposed of supporting a Multiple Active Result Sets (MARS) feature, including a data field header is for

identifying pending requests. The method for processing requests data from a database, which the script

or application issues a query sending across the internet to the server; see col. 5, lines 15-20) and

"identifies a number of pending requests known [[by]] the a client device to [[a]] the server device" (In light

the specification at paragraph [0031], the purposed of identifying pending requests is for identifying a

number of requests known by a client to a server. The method for processing requests data from a

database, which application issues a query sending across the internet to the server; see col. 5, lines 15-

20), "the MARS header is employed to synchronize execution of queries for communication between the

client device and the server device" (i.e., client and server, querying marshaling (synchronizing) across

the internet, database interfacing application processing interface queries (the execution queries) the

database system and retrieving the rows (data); see col. 7, lines 45-58).

Anand fails to explicitly disclose steps of based at least in part on the number of pending request

known by the client device regardless of buffer size for the client device and the server device. However,

Jordan discloses based at least in part on the number of pending request known by the client device (see

Jordan col. 2, lines 49-67) and buffer size for the client device and the server device (see Jordan col. 5,

lines 8-17). It would have been obvious to a person of ordinary skill in the art at the time the invention was

made to modify the system of Anand by the number of pending request known by the client device (see

Jordan col. 2, lines 49-67) and buffer sizing as disclosed by Jordan (see Jordan col. 2, lines 49-59 and

col. 6, lines 21-25 and Fig. 4). Such a modification would allow the system of Anand to provide enhancing

database server, memory allocation and memory copying during the process of reconstruction a data structure (see Jordan col. 1, lines 26-32), therefore, improving the accuracy and the reliability of the enhanced tabular data stream protocol.

As per claim 2, Anand discloses "the TDS protocol further comprises a transaction descriptor header that enables a plurality of active transactions under a single session" (In light the specification at paragraph [0010], the purposed of supporting a Multiple Active Result Sets (MARS) feature, including a data field header is for identifying pending requests. The method for processing requests data from a database, which script or application issues a query sending across the internet to the server; see col. 5, lines 15-20).

As per claim 4, Anand discloses "the TDS protocol further comprises an environmental change event feature that is sent to the client when a transactional state of the server changes" (i.e., allowing server to apply client updates; see col. 9, lines 64-66).

As per claim 5, Anand discloses "the state of server changes when a connection is reset to another server as part of a data base mirror environment" (In light the specification at paragraph [0032], the purposed of changing state is for resetting component, which can send back information about a transaction change. The method for recreating rowsets is for updating the database is disclosed by Anand col. 7, lines 60-64 and Fig. 5).

As per claim 6, Anand discloses "the client cancels a command being currently executed via transmittal of a non severe attention signal without a connection drop of the communication" (In light the specification at paragraph [0040], the purposed of canceling (interrupting) a current command without affecting transaction by sending a non severe attention (NSA) signal is for canceling a specific request. The method for requests data from a database, which application issuing a query sending across the internet to the server, where it is interpreted by the server process; see col. 5, lines 15-20).

As per claim 7, Anand discloses "the client executes a remote procedure call on the server" (i.e., client accessing the server, querying sending call requesting execution; see col. 2, lines 22-24).

As per claim 8, Anand discloses "the client requests a connection to enlist in a distributed transaction coordinator (DTC)" (i.e., client processing requests data by issuing a query across the internet; see col. 5, lines 15-20).

As per claim 9, Anand discloses "the TDS protocol enables a change of order for parameters is for outputting from the server" (In light the specification at paragraph [0033], the purposed of changing order is for re-order component for outputting parameters. The method for ordering column ordinals (components), which identify positions in the result set (outputting parameters) is disclosed by Anand col. 21, lines 58-60), and "retrieval of parameters from an application programming interface (API) of the network environment" (i.e., application programming interface (API) providing interfaces for executing (retrieving) applications across a network; see col. 10, lines 15-17).

As per claim 23, Anand "a ~~computing~~ computer-implemented system to facilitates communication between client device and a server device networks" (i.e., client and server are connected through a network; see col. 5, lines 12-2 and Fig. 1) comprising;

means for issuing a query by a client device" (i.e., client issuing a query; see col. 7, lines 46-47);

"means for processing the query by a server device" (i.e., query processing (running) by the server; see col. 7, lines 48-49 and Fig. 4); and

"means for sending the query results to the client device such that the client device and server device are synchronized" (i.e., client and server, querying marshaling (synchronizing) across the internet, database interfacing application processing interface queries (the execution queries) the database system and retrieving the rows (data); see col. 7, lines 45-58).

Anand fails to explicitly disclose steps of <u>based at least in part on the number of pending request</u> <u>known by the client device</u> regardless of a buffer size of the computing system. However, Jordan discloses <u>based at least in part on the number of pending request known by the client device</u> (see Jordan col. 2, lines 49-67) and a buffer size the computing system (see Jordan col. 5, lines 8-17). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Anand by <u>based at least in part on the number of pending request known by the client device</u> and buffer sizing as disclosed by Jordan (see Jordan col. 2, lines 49-59 and col. 6, lines 21-25 and Fig. 4). Such a modification would allow the system of Anand to provide enhancing database server (see Jordan col. 1, lines 26-32), therefore, improving the accuracy and the reliability of the enhanced tabular data stream protocol.

As per claims 26-28, the limitations of claims 26-28 are similar to claims 1-10, therefore, the limitations of claims 26-28 are rejected in the analysis of claims 1-10, and these claims are rejected on that basis.

Claims 3, 10 and 29-30 are rejected under 35 U.S.C.103(a) as being unpatentable over U.S., Patent 5,974,416 issued to Anand et al., ("Anand") in view of U.S., Patent 5,412,805 issued to Jordan, II et al., ("Jordan") as applied to claims 1-2, 4-9, 11-13, 23 and 26-328 above, and further in view of U.S. Pat. No. 6,356,946 issued to Clegg et al., ("Clegg").

As per claim 3, in addition to claim 1, Anand substantially discloses the subject matted of the invention, except a <u>chunk format</u> component that employs a partially Length Prefix (PLP) format to transmit data ~~supports a chunked data type within the communication data stream~~ <u>between the client</u> <u>device and the server device.</u> However, Clegg discloses except a <u>chunk format</u> component that employs a partially Length Prefix (PLP) format to transmit data ~~supports a chunked data type within the~~ ~~communication data stream~~ <u>between the client device and the server device</u> (see Clegg col. 11, lines 26-31 and Fig. 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Anand by except a <u>chunk format</u> component that employs a partially Length Prefix (PLP) format to transmit data ~~supports a chunked data type within the communication data stream~~ <u>between the client device and the server device</u> as disclosed by Clegg (see Clegg col. 15, lines 7-12). Such a modification would allow the system of Anand to provide more efficient serialization (see Clegg col. 11, lines 23-24), therefore, improving the accuracy and the reliability of the enhanced tabular data stream protocol.

As per claim 10, in addition to claim 1, Anand substantially discloses the subject matted of the invention, except specifies a <u>new password as part of a login procedure when an old password</u> is presented. However, Clegg discloses specifies a new password as part of a login procedure when an old password is presented (see Clegg col. 14, line 25 to col. 15, line18).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Anand by specifies a <u>new password as part of a login procedure when an old password</u> is presented as disclosed by Clegg (see Clegg col. 15, lines 7-12). Such a modification would allow the system of Anand to provide support for login capability negotiation (see Clegg col. 6, line 65 to col. 7, line 3), thereby improving the accuracy and the reliability of the enhanced tabular data stream protocol.

As per claim 29, in addition to claims 1 and 3, Anand further discloses "indicates that a total value of a length of a data stream is not known and the data stream can be transmitted in multiple data stream packets" (see col. 6, lines 56-59).

As per claim 30, the limitations of claim 30 are similar to claims 1, 2 and 3, therefore, the limitations of claim 30 are rejected in the analysis of claims 1, 2 and 3, and this claim is rejected on that basis.

II.   The amendment of Claim 13, has overcome the 35 U.S.C. 112 rejection(s). Thus, the rejection(s) has (have) been withdrawn.

The amendment of Claims 1 and 23, has overcome the 35 U.S.C. 112 rejection(s). Thus, the rejection(s) has (have) been withdrawn.

However, on page 12, paragraph 3, Applicant stated that "as recited in claims 1-4, 11, 12, and 23 produces a useful, concrete, and tangible result. For example, claim 1, as amended, recites: **a computer-implemented system to facilitate communication between a client device and a server device comprising: a tabular data stream (TDS) protocol that comprises: a multiple active result set (MARS) header, and a data field** that is part of the MARS header and **identifies a number of pending requests known by the client device to the server device, the MARS header is employed to synchronize execution of queries** for communication between the client device and the server device, based at least in part on the number of pending requests known by the client device, regardless of buffer size for the client device and the server device.

Wherein claim 11 recites:

A ~~computing~~ computer-implemented system that facilitates communication in client/server networks comprising:

a server device in communication with a client device via a tabular data stream (TDS) protocol in a network environment; and

the TDS protocol comprising a query notification header with a data field that requests updates related to a query at a time the communication is initially established.

Thus, the U.S.C. 101 rejection of claim 11 maintains.

On page 13, paragraph (IV), Applicant stated that "Rejection of Claims 11-13 Under 35 U.S.C. § 102(b)

Claims 11-13 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over Anand, et al. (US 5,974,416).

> For a prior art reference to anticipate, 35 U.S.C. § 102 requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

Applicants' claimed invention relates to an enhancement of a Tabular Data Stream (TDS) protocol that can be employed for client/server communication networks.

The claimed subject matter can employ a Multiple Active Result Sets (MARS) feature, which can include a data field header, for example. Such data field can identify, to a server, the number of pending requests known by a client, and thereby facilitate query synchronization, regardless of buffer sizes employed in the client-server communications network. The client's reporting of the number of pending requests to the server can facilitate synchronizing execution of queries, for example, where the server already has completed processing of previous requests. This can typically mitigate inconsistent server behavior related to instances where buffer zones are waiting to be read by the client."

Wherein claim 11 recites:

A ~~computing~~ computer-implemented system that facilitates communication in client/server networks comprising:

a server device in communication with a client device via a tabular data stream (TDS) protocol in a network environment; and

the TDS protocol comprising a query notification header with a data field that requests updates related to a query at a time the communication is initially established.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a Multiple Active Result Sets

(MARS)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Thus, the arguments are not persuasive.

In response to applicant's argument, page 15, last paragraph of section (V), that "Anand, et al. and Jordan, II, et al., alone or in combination, do not disclose, teach, or suggest this distinctive feature of the claimed subject matter." The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Anand fails to explicitly disclose steps of based at least in part on the number of pending request known by the client device regardless of buffer size for the client device and the server device. However, Jordan discloses based at least in part on the number of pending request known by the client device (see Jordan col. 2, lines 49-67) and buffer size for the client device and the server device (see Jordan col. 5, lines 8-17). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Anand by the number of pending request known by the client device (see Jordan col. 2, lines 49-67) and buffer sizing as disclosed by Jordan (see Jordan col. 2, lines 49-59 and col. 6, lines 21-25 and Fig. 4). Such a modification would allow the system of Anand to provide enhancing database server, memory allocation and memory copying during the process of reconstruction a data structure (see Jordan col. 1, lines 26-32), therefore, improving the accuracy and the reliability of the enhanced tabular data stream protocol.

In response to applicant's argument, page 18, paragraph (VI), that "Anand, et al., Jordan, II, et al., and Clegg, et al., alone or in combination, do not disclose, teach, or suggest all the limitations of the subject claims. Claims 3 and 10 depend from independent claim 1. Clegg, et al. fails to cure the aforementioned deficiencies of Anand, et al. and Jordan, II, et al. with respect to independent claim 1. Accordingly, it is believed that claims 3 and 10 are in condition for allowance, and the rejection should be

withdrawn." The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Anand by except a <u>chunk format</u> component that employs a partially Length Prefix (PLP) format to transmit data ~~supports a chunked data type within the communication data stream~~ <u>between the client device and the server device</u> as disclosed by Clegg (see Clegg col. 15, lines 7-12). Such a modification would allow the system of Anand to provide more efficient serialization (see Clegg col. 11, lines 23-24), therefore, improving the accuracy and the reliability of the enhanced tabular data stream protocol.

       Anand relates to transferring tabular data stream over a network; see col. 1, lines 5-7.

       Jordan relates to remote access; see col. 1, lines 6-10.

       Clegg relates to improving data streaming; see col. 1, lines 30-35. Thus, the combination of Anand, Jordan and Clegg discloses the claimed limitations.

       Further, the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

       MPEP 2111: During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification" Applicant always has the opportunity to amend the claims during prosecussion and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51

(CCPA 1969). The court found that applicant was advocating ... the impermissible importation of subject matter from the specification into the claim. See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definition or otherwise that may be afforded by the written description contained in application's specification.").

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). For the above reasons, it is believed that the last Office Action was proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth

in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from

the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX

MONTHS from the mailing date of this final action.

CONTACT INFORMATION

2.   Any inquiry concerning this communication or earlier communications from the examiner should

be directed to JEAN B. FLEURANTIN whose telephone number is 571-272-4035. The examiner can

normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

JOHN E BREENE can be reached on 571-272-4107. The fax phone number for the organization where

this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

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